IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

OP.No. 21960 of 1998(L)

PETITIONER:

E. VELAPPAN, ASSISTANT CONSERVATOR OF FORESTS,
ESTATE OFFICER, FOREST HEADQUARTERS,
THIRUVANANTHAPURAM - 14.

BY ADV. SRI.B.RAMAN PILLAI,
SRI.GEORGE JACOB (JOSE).

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE**
PRINCIPAL SECRETARY TO GOVERNMENT,
FOREST & WILD LIFE DEPARTMENT,
CONVENOR, D.P.C. (HIGHER), FOREST DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE PRINCIPAL CONSERVATOR OF FORESTS (GENERAL),**
FOREST HEADQUARTERS, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SMITHA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 38671/1998 IN O.P. NO. 21960/1998

DISMISSED

08/06/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE RELEVANT EXTRACT OF THE GOVT. ORDER NO. (GO)RT 117/96/F&WLD DTD. 19/03/1996.

EXT.P.2: COPY OF THE PROCEEDINGS GO(MS) NO. 96/97/F&WLD DTD. 18/11/1997.

EXT.P.3: COPY OF THE RELEVANT EXTRACT OF THE FINAL SENIORITY LIST PUBLISHED BY THE R.2.

EXT.P.4: COPY OF THE REVIEW APPLICATION FILED BY THE PETITIONER DT. 26/11/1997.

EXT.P.5: COPY OF THE PETITION FILED BY THE PETITIONER DTD. 05/03/1998.

EXT.P.6: COPY OF THE APPLICATION FILED BY THE PETITIONER DTD. 21/07/1998.

EXT.P.7: COPY OF THE COMMUNICATION NO. 11618/F1/97/F&WLD DTD. 17/10/1998 TO THE PETITIONER.

EXT.P.8: COPY OF THE CHARGE MEMO DTD. 31/12/1997 OF THE R.1.

EXT.P.8.A: COPY OF THE STATEMENT OF ALLEGATIONS.

EXT.P.9: COPY OF THE MEMO OF CHARGE DT. 22/04/1998 NO. 541/E2/98/VIG.

EXT.P.9.A: COPY OF THE STATEMENT OF ALLEGATIONS.

EXT.P.10: COPY OF THE WRITTEN STATEMENT OF DEFENCE DT. 03/03/1998 FILED BY THE PETITIONER.

EXT.P.11: COPY OF THE GOVT. ORDER GO(MS). NO. 68/98/VIG. DT. 17/10/1998.

EXT.P.12: COPY OF THE WRITTEN STATEMENT OF DEFENCE DT. 15/06/1998 FILED BY THE PETITIONER.

O.P. NO. 21960/1998:

EXT.P.13: COPY OF THE G.O (RT). NO. 217/2000/VIG. DTD. 05/09/2000.

EXT.P.14: COPY OF THE G.O. (RT). NO. 208/2000/VIG. DTD. 29/08/2000.

EXT.P.15: COPY OF THE JUDGMENT IN O.P. NO. 10479/2001 DTD. 05/04/2001.

EXT.P.16: COPY OF THE PROCEEDINGS DTD. 08/08/2001 OF THE R.2.

EXT.P.17: COPY OF THE COMMON JUDGMENT IN CRL.M.C. NOS. 5508/03 5511, 5515 AND 5522 OF 2003 DT. 16/12/03.

EXT.P.18: COPY OF THE ORDER OF THE HONOURABLE SUPREME COURT DTD. 16/09/2005 IN THE SPECIAL LEAVE PETITION FILED BY THE R.1.

EXT.P.19: COPY OF THE PROCEEDINGS OF THE R.2. DROPPING FURTHER PROCEEDINGS AND IMPOSING `CENSURES' DT. 13/01/98.

EXT.P.20: COPY OF THE LETTER DTD. 23/12/2003 ADDRESSED TO THE R.1.

EXT.P.21: COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF THE D.P.C. MEETING ON 06/10/1997.

EXT.P.22: COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF THE DPC MEETING HELD ON 10/06/1999.

EXT.P.23: COPY OF THE REPRESENTATIO SUBMITTED BY THE PETITIONER TO THE R.1. DTD. 12/08/1999.

EXT.P.24.A: COPY OF THE F.I.R. IN VIGILANCE CRIME CASE 16/1994.

EXT.P.24.B: COPY OF THE F.I.R. IN VIGILANCE CRIME CASE 17/1994.

EXT.P.24.C: COPY OF THE F.I.R. IN VIGILANCE CRIME 18/1994.

EXT.P.24.D: COPY OF THE F.I.R. IN VIGILANCE CRIME CASE NO. 19/1994.

EXT.P.24.E: COPY OF THE F.I.R. IN VIGILANCE CRIME CASE NO. 20/1994.

EXT.P.24.F: COPY OF THE F.I.R. IN VIGILANCE CRIME CASE NO. 21/1994.

EXT.P.24.G: COPY OF THE F.I.R. IN VIGILANCE CRIME CASE NO. 22/1994.

EXT.P.24.H: COPY OF THE F.I.R. IN VIGILANCE CRIME CASE NO. 23/1994.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.21960 of 1998-L

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Dated this the 8th day of June, 2007.

JUDGMENT

The petitioner, then a Ranger in the Kerala Forest Subordinate Service, was entitled for being considered for recruitment by transfer as Assistant Conservator in the Kerala Forest Service, having regard to the fact that he possessed the two qualifications prescribed for recruitment by transfer as Assistant Conservator. On 6-10-1997, the Departmental Promotion Committee met for preparation of select list in terms of Rule 28(b)(i) of Part II of Kerala State & Subordinate Services Rules for the vacancy of Assistant Conservator that arose on 14-3-1996.

2. While the confidential reports of the Officers being assessed for the purpose of preparation of that select list, going by the provisions of Rule 28(b)(i)(4), are those relatable to the preceding three years, thereby, not the previous date of occurrence of vacancy, Note (i) under Rule 28(b)(i)(7) provides a

method of dealing with the cases of officers who are either under suspension, facing disciplinary proceedings, involved in criminal cases or in vigilance proceedings. Note (i) under Rule 28(b)(i)(7) being a Note, is not intended to dilute, in any manner, the run and rigour of the Rule to which the Note is made. Therefore, the DPC was obliged in terms of Rule 28(b)(i) to consider the case of all the persons eligible for being considered for appointment to the said selection post. All that Note (i) to Rule 28(b)(i)(7) says is that in cases where an embargo is placed to the inclusion of persons facing proceedings referred to in that Note, in the select list, the cases of those persons will also have to be considered by the DPC, however that the DPC proceedings need only contain a note that “the findings are recorded in the attached sheet of paper” and the findings are required to be placed in a sealed cover. This device in the Rule ensures that the same DPC considers the cases of persons who could aspire for a selection post by promotion or by transfer and further that there would be a comparative evaluation of merit and ability of all such persons by the same Committee. This would sustain the credibility of the selection by ensuring that the yardstick applied appropriately goes through the merit, ability, credentials and all

available data in relation to the competing candidates at a relevant point of time. After such results are arrived at, in view of the public interest involved, there is an embargo from including persons against whom there are proceedings referred to in Note (i), in the select list and therefore, they would not be included but the findings as regards them are to be placed in a sealed cover. If ultimately the proceedings referred to in Note (i) get exhausted in favour of the employee, the findings of the DPC, resting inside the sealed cover would be taken out and appropriate action will follow on the basis of that. This is the method in which Note (i) has to work.

3. But, unfortunately, in this case, in spite of the DPC being headed by a Member of the PSC and in spite of top ranking executives of the State being on the Committee, Note (i) of Rule 28(b)(i)(7) stands flouted. The non-following of that Note in this case has led to the situation where the only plea that the Government now offers in support of its decision not to consider the petitioner in that DPC was that he was placed under suspension on 15-5-1997 and that he was facing certain vigilance proceedings. The order of suspension of the petitioner on 15-5-

1997 was stayed by this Court in O.P.No.8461 of 1997. Therefore, the fact that the petitioner was placed under suspension was one irrelevant to exclude him from the list when the DPC met on 6-10-1997, even going by Note (i). In so far as vigilance proceedings or departmental proceedings are concerned, the embargo against inclusion is only in the case of those officers against whom such proceedings are taken after the charges have been established in a preliminary enquiry. Indisputably, such a situation had also not arisen. Therefore, it goes without saying that had the DPC found the petitioner entitled to be included in the select list, his non-inclusion in the select list on the two counts urged by the Government would be illegal.

4. But the situation in hand cannot be cured by the Government going back to its files to pull out the findings in the sealed cover because, there is neither a sealed cover nor any finding. The resultant situation is gross injustice in the realm of service law. The writ petitioner, going by the materials, has hardly six months more to serve the Government.

Having regard to what is aforesaid, this writ petition is allowed in the following terms:

(i) A review meeting of the DPC that was held on 6-10-1997 shall be held and the case of the petitioner considered within the period of two months from now.

(ii) The inclusion of the petitioner for appointment by transfer as Assistant Conservator shall be so determined with effect from 14-3-1996, the date of occurrence of vacancy.

(iii) If the DPC concludes that the petitioner was entitled to be included in the select list in terms of what is stated above, he shall be given all attendant benefits, including placement to higher categories and benefits.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.21960 of 1998-L

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JUDGMENT

Dated: 8th June, 2007.